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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re O.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

O.C.,

Defendant and Appellant.

C045464

(Super. Ct. No. J26987)

Following a contested jurisdictional hearing, the juvenile court sustained charges against O.C. (the minor), of resisting an officer (count 1), criminal threats (count 2), assault upon an officer and vandalism causing under \$400 of damage. The minor was committed to the California Youth Authority (CYA) for a maximum confinement time of seven years and ten months.

On appeal, the minor contends and the People agree that:
(1) remand is required because the court failed to declare whether counts 1 and 2 were felonies or misdemeanors; and

(2) probationary conditions attached to the CYA commitment must be stricken. We shall remand the matter for the juvenile court to determine the felony or misdemeanor status of counts 1 and 2 and to strike the probationary conditions.

DISCUSSION¹

I

The Court Failed To Declare Whether Counts 1

And 2 Were Felonies Or Misdemeanors

The minor contends that the matter must be remanded to the juvenile court to make an express finding as to whether counts 1 and 2 were felonies or misdemeanors. We agree.

Welfare and Institutions Code section 702 provides in pertinent part: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony."

Welfare and Institutions Code section 702 "requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult." (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) Other appellate decisions, cited with approval in *Manzy W.*, have held that neither a court's recitation of the felony charge made in the petition, nor a court's commitment of the juvenile offender for the maximum, felony-length term, nor a minute order reciting

¹ The facts of the offenses are not relevant to the issues raised on appeal. Therefore, we will forgo a recitation of those facts.

that an offense is or could be a "felony," constitutes full compliance with the statutory mandate. (*In re Ricky H.* (1981) 30 Cal.3d 176, 191; *In re Dennis C.* (1980) 104 Cal.App.3d 16, 23; *In re Jeffery M.* (1980) 110 Cal.App.3d 983, 985.) "The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit." (*Manzy W.*, at p. 1209.)

The offenses of resisting an officer and criminal threats may be punished alternatively as felonies or misdemeanors. (Pen. Code, §§ 69, 422.) At neither the jurisdictional hearing nor the dispositional hearing did the court state the felony or misdemeanor status of these offenses. Furthermore, there is nothing in the record to indicate that the juvenile court was aware of, and exercised its discretion to determine the status of these two offenses. Because the court did not make this determination and because the record fails to show that the court was aware of its discretion, the matter must be remanded for the required findings on these counts. (*In re Manzy W.*, *supra*, 14 Cal.4th at pp. 1210-1211.)

II

Probationary Conditions Must Be Stricken

In committing the minor to CYA, the court ordered the "additional terms and conditions as set forth by Probation" imposed on the minor. In *In re Allen N.* (2000) 84 Cal.App.4th 513, 516, we stated that upon a commitment to CYA, "the juvenile court's imposition of discretionary conditions of probation

constitutes an attempt to regulate or supervise the minor's rehabilitation, a function solely in the hands of CYA after the minor's commitment."

Relying on *In re Allen N.*, the minor correctly contends that the following enumerated conditions of probation must be stricken: No. 31, ordering that the minor submit to search and seizure by a peace officer without probable cause; No. 33, ordering that the minor submit to any testing, treatment or program designed to detect the presence of alcohol or drugs by any probation officer or peace officer; No. 34, ordering the minor to not be out of his residence between 7:00 p.m. and 6:00 a.m. except with the probation officer's consent; No. 35, prohibiting the minor from having any dangerous or deadly weapons in his possession or remaining in the presence of any unlawfully armed person; No. 36, prohibiting the minor from associating with anyone known to him to be on probation or parole, anyone involved in the instant crimes, or anyone known to him to be a gang member; No. 37, prohibiting the minor from being involved in or associating with anyone known to him to be a gang member, from wearing gang-related clothing, or displaying gang-related markings. We order these conditions stricken. (*In re Allen N.*, *supra*, 84 Cal.App.4th at p. 516.)

We note that, in addition to these special conditions of probation, the court also imposed upon the minor all the general conditions of probation, enumerated in Nos. 1 through 9, in the probation report. We order these conditions stricken as well.

DISPOSITION

The juvenile court's determination that the minor's maximum period of confinement is seven years and ten months is vacated. The matter is remanded to determine the felony or misdemeanor status of counts 1 and 2 and to recalculate the minor's maximum period of confinement, if necessary. The court must also strike probationary conditions Nos. 1 through 9 and 30, 31, 33, 34, 35, 36, and 37.

The juvenile court is directed to amend its records accordingly and to forward to the Director of the CYA an amended commitment order reflecting these changes. In all other respects, the judgment (order committing the minor to CYA) is affirmed.

ROBIE, J.

We concur:

RAYE, Acting P.J.

CANTIL-SAKAUYE, J.